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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the sixth periodic report of the United States of America*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In its previous concluding observations (see CAT/C/USA/CO/3-5, para. 33),[1] the Committee requested the United States of America to provide further information regarding areas of particular concern identified by the Committee in paragraphs 12 (a), 14 (c) and 17. Noting that a reply concerning the information sought by the Committee was provided on 26 November 2015 (CAT/C/USA/CO/3-5/Add.1 and Corr.1), the Committee expresses appreciation for the State party's responses on those matters and the substantive information provided. In that connection, the Committee draws the attention of the State party to the letter dated 29 August 2016 from the Committee's Rapporteur for follow-up to concluding observations, addressed to the Permanent Representative of the United States to the United Nations Office and other organizations in Geneva, in which the Rapporteur encouraged the Government of the United States to provide, in its subsequent periodic report, additional information on the following issues: (a) inquiries into allegations of torture overseas; (b) the Guantanamo Bay detention facilities; (c) interrogation techniques; and (d) excessive use of force and police brutality.

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (para. 9), please provide detailed information on the measures taken to criminalize torture at the federal level, in full conformity with article 1 of the Convention, and to ensure that penalties for torture are commensurate with the gravity of the crime. Please provide updated information on any changes in the State party's position on withdrawing its interpretative understandings and reservations to the Convention.

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

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Article 2[2]

3. With regard to the Committee's previous concluding observations (paras. 10 and 11), and in the light of the State party's follow-up replies, please provide detailed information on any relevant legislative, administrative, judicial or other measures taken during the period under review to prevent acts of torture or ill-treatment in any territory under its jurisdiction, as defined in general comment No. 2.

4. Please provide information on the steps taken and procedures in place to ensure, in law and in practice, that all persons deprived of their liberty are guaranteed all legal safeguards from the very outset of the deprivation of their liberty, including the right to be registered at the time of detention, the right to receive prompt legal assistance and the right to inform a family member of their arrest. In this respect, please provide information on any investigation into allegations of unacknowledged detention of individuals at the Chicago Police Department facility known as Homan Square.

5. Have any measures been adopted to establish an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)?

6. Please provide updated information on legislative, administrative and other measures taken to eliminate all forms of violence against women, including domestic violence. Please also provide updated information on the protection and support services available to victims of gender-based violence in the State party.

7. With respect to the previous concluding observations (para. 30), please inform the Committee about measures taken to prevent and eradicate sexual violence in the military. Please indicate what measures the State party has put in place to ensure impartiality in the investigation of, prosecution in and adjudication of cases involving sexual violence in the United States military. What measures have been taken to ensure that complainants and witnesses are protected from any acts of retaliation or reprisals related to their complaint or testimony? What steps are being taken to provide effective redress to victims of sexual violence in the military?

8. Please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences imposed in cases of human trafficking since the consideration of the State party's previous periodic report. Please also provide information on:

(a) Any new legislation or measures that have been adopted to prevent, combat and criminalize trafficking in persons;

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies and reparation;

(c) The establishment of agreements with other countries to prevent and combat human trafficking.

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[2] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

Article 3

9. In the light of the previous concluding observations (para. 18), please describe the measures taken to ensure the adequacy of the refugee determination process and asylum procedures, in particular during accelerated removal proceedings. Please provide information on the steps taken and procedures in place to ensure that all asylum seekers are guaranteed legal and other assistance, including interpretation services, at all stages of the status determination procedure. Please also provide detailed information on the measures adopted to ensure that vulnerable persons seeking asylum in the United States, such as victims of torture and/or trauma and unaccompanied minors, are identified and that their specific needs are taken into full consideration and addressed in a timely manner.

10. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide details on the grounds of which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that exist, any appeals that have been made and the outcome of those appeals.

11. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances, whether given or received, and what measures have been taken in such cases with regard to subsequent monitoring? In this regard, please also indicate the name, sex, age and nationality of individuals not included in the unclassified summary report of the United States Senate Select Committee on Intelligence regarding the 119 Central Intelligence Agency (CIA) detainees that the United States rendered to other countries as part of the CIA rendition, detention and interrogation programme, regardless of the degree of process involved.

12. Please provide information on the legislative and other measures taken to improve the identification and determination of statelessness and introduce procedural safeguards to improve access to the statelessness determination procedure.

Articles 5-9

13. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention.

14. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties.

15. Please clarify what mutual judicial assistance treaties or agreements the State party has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

Article 10

16. With reference to the previous concluding observations (para. 28), please provide up-to-date information on educational programmes developed to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

17. Bearing in mind the Committee's previous concluding observations (para. 27), please detail the training methodology and programmes used when instructing law enforcement officials, prison staff and other security forces in the use of electrical discharge weapons, or any other less-than-lethal device. Please detail any incidents that have occurred as a result of using such devices, and provide information detailing the outcomes of any investigations into said incidents. Has the State party revised the regulations governing the use of such weapons?

18. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)?

Article 11

19. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous periodic report. Please indicate the frequency with which they are reviewed.

20. With reference to the previous concluding observations and taking into account the State party's follow-up replies and the letter dated 29 August 2016 from the Rapporteur for follow-up to concluding observations, please indicate what concrete steps have been taken to implement the Committee's recommendations on interrogation techniques. Has the State party reviewed appendix M of Army Field Manual No. 2-22.3 in the light of the Committee's previous concluding observations and assessed its compatibility with the recently reviewed United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)? Please comment on information before the Committee indicating that serious concerns persist regarding the possible combined use of the "separation" technique with abusive sleep or sensory deprivation. Please clarify whether the "field expedient method" can be applied after detention at the initial facility, and if so, under which conditions?

21. With regard to the Committee's previous concluding observations (para. 14) and the State party's follow-up replies, please indicate what the situation is with respect to the closure of the detention facilities at Guantanamo Bay. Please include up-to-date information on the current prison population at Guantanamo Bay and on inmates repatriated, resettled or transferred out of the facility since the consideration of the previous periodic report. Please provide detailed information on the legal situation, health status and detention conditions of all Guantanamo Bay detainees, including those held in Camp 7. Please inform the Committee about measures taken to address concerns regarding inadequate medical care at Guantanamo Bay. Please indicate the number of detainees currently on hunger strike and provide information on their health condition and whether

they were fed against their will. Has the State party taken steps to end the use of indefinite detention without charge or trial for individuals suspected of terrorism-related activities? Please also indicate what measures the State party has put in place to ensure that detainees held in Guantanamo Bay are charged and tried in ordinary federal courts, and that any other detainees who are not charged or tried are immediately released. Please provide information on the concrete measures taken to ensure that Guantanamo Bay detainees and their counsels have access to all evidence used to justify their detention.

22. Please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention.

23. Taking into account the Committee's previous concluding observations (para. 20), please clarify the current policy regarding the use of solitary confinement in prisons and within the immigration detention system. Please also provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of persons placed in solitary confinement in federal and state prisons, national security detention facilities and immigration detention centres, and indicate how many of them have been held under such a regime for more than 15 days. Please include information about related hunger strikes, suicide attempts and other incidents of self-harm among prisoners held in solitary confinement. What steps has the State party taken to ensure the application of the United States Immigration and Customs Enforcement's 2013 directive on solitary confinement and its 2015 guidelines on the care of transgender detainees?

24. With regard to the Committee's previous concluding observations (para. 21), please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome. What concrete measures have been taken to prevent and combat violence, including sexual assault, in prisons and places of detention?

25. In the light of the previous concluding observations (para. 22) and the State party's follow-up replies, please provide statistical data regarding deaths in detention, including in police custody, during the period under consideration, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and cause of death. Please provide information on the results of the investigations into deaths and on the measures taken to prevent similar cases occurring in the future. Please also provide information on the concrete measures taken by the State party to address concerns about prison conditions, in particular deficiencies relating to temperature and insufficient ventilation leading to extreme heat exposure.

26. With reference to the previous concluding observations (para. 23), please provide information on efforts by the State party to meet the special needs of persons with psychosocial disabilities and minors in detention. Please provide information on the concrete measures taken by the State party to address concerns regarding the placement of juveniles in adult facilities. Please also indicate the steps taken to abolish the sentence of life imprisonment without parole for juveniles (para. 24).

27. Bearing in mind the Committee's previous concluding observations (para. 25), please provide information on the number of prisoners sentenced to death who are awaiting execution and on the number of executions carried out since the consideration of the previous periodic report. What are the conditions of detention for prisoners awaiting execution? Please indicate the average waiting time between sentencing and execution. What methods of execution are used by the State party? Has the State party reviewed its execution methods in order to prevent severe pain and suffering? Has the State party considered establishing a moratorium on executions with a view to abolishing the death penalty at the federal level?

28. In the light of the previous concluding observations (para. 19), please indicate the measures taken by the State party to ensure that detention of asylum seekers and migrants is used only as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to detention. Please inform the Committee about the steps taken to review the State party's mandatory detention system. What are the procedural safeguards in place to ensure that any use of detention is based on an individualized assessment and provides for periodic, independent review of such restrictions? Please provide information on the concrete measures taken by the State party to use alternatives to detention for children and families with children. Please also comment on reports (see, for example, Amnesty International, "United States of America: submission to the UN Committee against Torture", eighth page) about substandard conditions of detention in immigration facilities.

29. Please comment on allegations of denial of medical care, confiscation of legal documents, and even sexual abuse of and death threats against detained immigrants by Border Patrol and United States Customs and Border Protection officials (see American Civil Liberties Union, "Submission to the United Nations Committee against Torture: list of issues prior to reporting — United States", 2016, pp. 9-12). Please also provide information on the steps taken to prevent sexual assault in immigration detention and ensure that all facilities holding immigration detainees comply with the standards provided for in the Prison Rape Elimination Act. Has the State party taken steps to establish an independent oversight mechanism to ensure prompt, impartial and effective investigations into all allegations of violence and abuse in immigration centres?

30. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities, including care homes. Please include information on their living conditions. Please also indicate what the situation is with respect to alternative forms of treatment such as community-based rehabilitation services and other forms of outpatient treatment programmes.

Articles 12 and 13

31. Please provide updated statistical data, disaggregated by sex, age, ethnic origin or nationality, and place of detention, on complaints of acts of torture and ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions applied. Please provide examples of relevant cases and/or judicial decisions.

32. With reference to the Committee's previous concluding observations (para. 21), please comment on information before the Committee indicating that serious concerns persist regarding the restrictions imposed by the Prison Litigation Reform Act (United States Code, title 42, sect. 1997 e) on litigant prisoners, such as the physical injury requirement (sect. 1997 e (e)) and the exhaustion of administrative remedies requirement (sect. 1997 e (a)).

33. Bearing in mind the Committee's previous concluding observations (para. 12) and the State party's follow-up replies, please comment on allegations that the State party has not carried out adequate investigations of those responsible for authorizing or implementing the detention and interrogation programme of the CIA or those who engaged in acts even beyond the "enhanced interrogation techniques" that were authorized. In this connection, please comment on ongoing concerns regarding inadequacies of and limitations on evidence in the State party's inquiries into allegations of torture overseas, including the criminal investigation undertaken by a special prosecutor, John Durham, into allegations of mistreatment of detainees in United States custody at overseas locations. Please indicate the total number of allegations received and the number of investigations carried out by the

State party in such cases. Please include information regarding the nature of the offences, the charges and the types of convictions and penalties.

34. With regard to the Committee's previous concluding observations regarding military accountability for abuses (para. 13), and the State party's follow-up replies, please provide up-to-date information on the number of investigations, prosecutions, disciplinary proceedings and corresponding reparations in cases of alleged torture and ill-treatment by military personnel. Please also provide information on the sentences and criminal or disciplinary sanctions imposed on offenders, indicating whether the alleged perpetrators of those acts were suspended from the United States military pending the outcome of the investigation of the abuses.

35. With reference to the Committee's previous concluding observations (paras. 14 and 15) and the State party's follow-up replies, please provide information on any investigation into allegations of detainee abuse, including torture and ill-treatment, in Guantanamo Bay detention facilities. Please provide details on how individuals detained at the Guantanamo Bay detention facility can make complaints about torture or ill-treatment that they alleged occurred at Guantanamo Bay. Please provide information on the measures taken by the State party to declassify accounts of torture by Guantanamo Bay detainees.

36. In the light of the Committee's previous concluding observations (para. 26) and the State party's follow-up replies, please indicate what measures the State party has put in place to ensure that all instances of police brutality and excessive use of force will be fully investigated and addressed. Please include statistical data, disaggregated by the age, sex, and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences handed down in cases of police brutality and excessive use of force since the consideration of the previous periodic report. In particular, please provide information on the outcome of the investigations and on disciplinary and/or criminal proceedings concerning the deaths of:

(a) Philando Divall Castile, a 32-year-old black man, in Falcon Heights, Minnesota, on 6 July 2016;

(b) Alton Sterling, a 37-year-old black man, in Baton Rouge, Louisiana, on 5 July 2016;

(c) Samuel DuBose, a 43-year-old black man, in Cincinnati, Ohio, on 19 July 2015;

(d) Sandra Bland, a 28-year-old black woman, in Waller County, Texas, on 13 July 2015;

(e) Freddie Carlos Gray, Jr., a 25-year-old black man, in Baltimore, Maryland, on 12 April 2015;

(f) Walter L. Scott, a 50-year-old black man, in North Charleston, South Carolina, on 4 April 2015;

(g) Antonio Zambrano Montesin Pasco, a 35-year-old Mexican national, in Pasco, Washington, on 10 February 2015;

(h) Tamir Rice, a 12-year-old black boy, in Cleveland, Ohio, on 22 November 2014;

(i) Michael Brown, a 18-year-old black man, in Ferguson, Missouri, on 9 August 2014;

(j) Juan May, a 45-year-old black man, in Arlington, Texas, on 21 June 2014;

(k) Clinton Allen, a 25-year-old black man, in East Oak Cliff, Dallas, Texas, on 10 March 2013.

Article 14

37. With reference to the previous concluding observations (para. 29) and in the light of the State party's follow-up replies, please provide information on redress and compensation measures, including means of rehabilitation ordered by the courts or other State bodies and actually provided to victims of torture or their families since the consideration of the previous periodic report. That should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

38. Please furnish information on the steps taken since the preceding periodic report was considered in November 2014 to provide redress and compensation, including rehabilitative measures, for victims of torture or ill-treatment at the hands of United States military personnel. Please indicate how many claims have been filed, how many have been successful and, in each of those cases, the amount of compensation that was granted and the amount that was actually paid.

39. In the light of the State party's follow-up replies, please describe the specific means by which those subjected to torture and ill-treatment by the CIA as part of its "enhanced interrogation programme", and who have been released from or remain in United States custody, can obtain redress. Please provide details on the types of redress that have been provided to individuals held as part of the CIA programme, whether in or out of United States custody. Please describe the specific medical treatment and rehabilitative care for torture or ill-treatment provided to former detainees of the CIA who remain in United States custody. Please also include information on the steps taken to provide redress for individuals who have been unlawfully detained for years at Guantanamo Bay.

40. In the light of the previous concluding observations (para. 26) and the State party's follow-up replies, please provide detailed information on the implementation of the legislation providing reparations for torture committed by former Chicago Police commander Jon Burge and detectives under his command passed by the Chicago City Council in May 2015. Has the State party taken steps to offer all survivors of torture by Chicago Police officers the opportunity to meaningfully challenge wrongful convictions?

Article 15

41. With regard to the Committee's previous concluding observations (para. 15), please provide information on the concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

42. Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the family, schools, day care and alternative care settings.

43. Please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation or gender identity are properly and promptly investigated and prosecuted.

44. Please provide comments on the extent of the conversion therapy imposed on minors and adults reported by the non-governmental organization National Center for Lesbian Rights (see submission by the Center to the Committee against Torture, 2014) and on the steps taken to combat that practice.

45. Please comment on the reports of premature surgery and other medical treatment to which intersex children are subjected (see interACT-Advocates for Intersex Youth, submission to the Committee against Torture, 2016). Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

46. Please describe any measures adopted to abolish the laws and policies criminalizing homelessness at state and local levels.

Other issues

47. With regard to the Committee's previous concluding observations (para. 11), please provide updated information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those antiterrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the legislative or other measures taken by the State party to ensure that no one is held in secret detention anywhere under its control. Please provide information on the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to antiterrorism measures in law and in practice; whether there have been any complaints of non-observance of international standards; and the outcome of those complaints.

48. With reference to the Committee's previous concluding observations (para. 31), please clarify whether the State party has reconsidered its position regarding the possibility of making the declaration provided for in article 22 of the Convention. In addition, is the State party considering ratifying the Optional Protocol to the Convention?

General information on other measures and development relating to the implementation of the Convention in the State party

49. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.